

Honorable _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ROBIN KROHN, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

V PACIFIC MARKET INTERNATIONAL,
LLC, a corporation,

Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Robin Krohn, individually and on behalf of all others similarly situated, by and through their undersigned attorneys, brings this Class Action Complaint against Defendant Pacific Market International, LLC (“Defendant” or “PMI”) for their negligent and/or intentional practice of misrepresenting and failing to fully disclose the presence of lead in Defendant’s popular Stanley cups sold throughout the United States, including this District. Plaintiff seeks both injunctive and monetary relief on behalf of the proposed class. Plaintiff alleges the following based upon personal knowledge as well as investigation by their counsel and, as to all other matters, upon information and belief. Plaintiff believes that a reasonable opportunity for discovery will reveal substantial evidentiary support for the allegations set forth herein.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over all causes of action asserted herein under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in controversy exceeds \$5,000,000 exclusive of interest and costs and more than two-thirds of the Class reside in states other than the states in which Defendants are citizens and in which this case is filed, and therefore any exemptions to jurisdiction under 28 U.S.C. §1332(d) do not apply.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiff has suffered injury as a result of Defendant's acts in this district, many of the acts and transactions giving rise to this action occurred in this District, Defendant conducts substantial business in this district, Defendant has intentionally availed itself of the laws and markets of this district, and Defendant is subject to personal jurisdiction in this district.

PARTIES

4. Plaintiff Robin Krohn is a resident of El Cajon, California, and purchased one of Defendant's Stanley cups ("Stanley cup" or "Stanley cups") for herself from a Dick's Clothing & Sporting Store in EL Cajon, CA on or around December 16, 2022. Based on Defendant's material omissions, Plaintiff Krohn was unaware that the Stanley cup contained any lead, and would not have purchased it or she would not have paid as much for it if that information was fully disclosed. Plaintiff was injured by paying a substantial premium for the Stanley cup whose value was less than what she paid for based on the presence of the alleged lead. Plaintiff would be willing to purchase a Stanley cup in the future if she could be certain that they do not contain (of have a material risk of containing) lead.

5. As the result of Defendant's negligent and/or knowingly deceptive conduct as alleged herein, Plaintiff was injured when she paid the purchase price or a price premium for the Stanley cup. Plaintiff would not have paid this money had she known that the Stanley cup contained any level of lead.

6. Defendant PMI is a Washington limited liability company with its principal place of business located at 2401 Elliot Avenue Fl. 4, Seattle, Washington 98121.

7. Defendant manufactures, distributes, markets, advertises, and sells the Stanley cup throughout the United States, including in this District, during the Class Period (defined below), both directly to consumers and through intermediaries. Defendant intended to, and did, substantially affect business and commerce within California.

FACTUAL ALLEGATIONS

8. PMI has existed for over 110 years and markets itself as “there for all your adventures so you can make the most of your world (whether you’re scaling a mountain or climbing an elm in your own backyard).”¹

9. PMI’s “Stanley products are created and manufactured to last a lifetime” so much so that PMI has a “Built for Life™ lifetime warranty.”²

10. PMI touts itself to provide “values-led manufacturing”³ and advertises its products as “your trusted companion[.]”⁴

11. PMI has marketed its products as safe, practical, and “made with BPA-free 90% recycled 18/8 stainless steel.”⁵

12. For example, The Quencher H2.0 Flowstate Tumbler is marketed as “Your trusted companion whether you’re hitting the road or your morning spin class.”⁶

13. In 2019, the Stanley Adventure Quencher Travel Tumbler was selling poorly, so PMI partnered with the Buy Guide, an affiliate-marketing site based in Utah, to launch a marketing

¹ Who We Are, <https://www.stanley1913.com/pages/about-stanley> (last visited Feb. 6, 2024).

² Sustainability at Stanley, <https://www.stanley1913.com/pages/sustainability> (last visited Feb. 6, 2024).

³ Sustainability at Stanley, <https://www.stanley1913.com/pages/sustainability>

⁴ See e.g., THE QUENCHER H2.0 FLOWSTATE™ TUMBLER | 40 OZ, Details & Specifications, <https://www.stanley1913.com/products/adventure-quencher-travel-tumbler-40-oz?variant=44559859613823> (last visited Feb. 6, 2024).

⁵ *Id.*

⁶ *Id.*

1 campaign. Buy Guide coached PMI to launch “an affiliate-marketing system through which fans
2 could make money by driving sales.”⁷ This resulted in a substantial sales increase, with the Stanley
3 brand leaping from \$70 million in annual sales to over \$750 million in 2023.

4 14. The success of the Stanley Adventure Quencher Travel Tumbler led to the launch
5 and subsequent popularity of other Stanley cups designed with the same insulation system and
6 sleek aesthetics.

7 15. In January 2024, in response to a number of reports alleging the presence of lead in
8 PMI products, PMI admitted that the manufacturing process utilizes a sealing material that
9 contains lead.⁸ Furthermore, PMI admitted that the base cap of a product may “come[] off due to
10 ordinary use and expose[] this seal”⁹, thus exposing the consumer to lead.

11 16. PMI failed to disclose that, if damaged, the Stanley cup could expose consumers to
12 lead. Thus, PMI knowingly misled consumers by failing to disclose that fact that a reasonable
13 consumer would want to know before purchasing.

14 17. At all relevant times herein, Defendant continued to promote the Stanley cups as
15 safe to use during strenuous activities – such as hiking, climbing, and skateboarding – even though
16 such activities could increase the risk of a Stanley cup being dropped and/or damaged.

17 18. In doing so, Defendant concealed the known risks and failed to warn of known or
18 scientifically knowable dangers and risks associated with ingesting lead.

19 19. Yet, PMI advertises and markets its Stanley cups to consumers who enjoy active
20 lifestyles, and such lifestyles increase the risk of damaging the product and exposing consumers
21 to the lead used to manufacture that very product.

22 20. The presence of lead at any level would be material to a reasonable consumer due
23 to the inherent and known risks of consumption and exposure.

24 ⁷ Kyle Chayka, *How the Stanley Cup Went Viral*, The New Yorker (January 30, 2024).

25 ⁸ *Do Stanley products contain lead?*, Stanley 1913,
26 <https://support.stanley1913.com/en/support/solutions/articles/69000850923-do-stanley-products-contain-lead-> (last visited Feb. 6, 2024).

⁹ *Id.*

21. PMI's explanation of lead use shows that PMI deliberately used lead in its cups' vacuum seals while knowing that Stanley cups could be damaged even through ordinary use.

22. PMI knowingly sells the Stanley cups to unsuspecting consumers. More specifically, it advertises and sells the Stanley cups to consumers with the assurance that they can be used during activity (*i.e.*, hiking and climbing) where a consumer could drop and/or damage the Stanley cups. Yet PMI fails to provide any warning whatsoever that this comes with substantial risk of lead exposure.

23. PMI had a duty to disclose its use of lead before enticing millions of customers to buy its Stanley cups.

24. Lead is a carcinogen and developmental toxin. It is dangerous in even trace amounts.

25. The U.S. Food and Drug Administration ("FDA") and World Health Organization ("WHO") have declared lead "dangerous to human health."¹⁰

26. Lead is poisonous and "disturbs the functions of almost every organ in the human body[.]"¹¹

27. "No amount of lead is known to be safe," and its effects cannot be reversed or remediated. The FDA, CDC, EPA, American Academy of Pediatrics ("AAP"), and WHO have all plainly stated that there is no safe level of lead.¹²

¹⁰ *Staff Report: Baby Foods are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury*, U.S. House of Representatives Committee on Oversight and Reform, Subcommittee on Economic and Consumer Policy, Feb. 4, 2021 ("House Report") at 2, available at <http://tinyurl.com/ytxswear> (last accessed Jan. 25, 2024).

¹¹ M Samuel Collin, et al, *Bioaccumulation of lead (Pb) and its effects on human: A review*, Journal of Hazardous Materials Advances (Aug. 2022).

¹² FDA, *Lead in Food and Foodwares*, available at <https://www.fda.gov/food/environmental-contaminants-food/lead-food-and-foodwares> (last accessed Feb. 12, 2024); CDC, *Health Effects of Lead Exposure*, available at <https://www.cdc.gov/nceh/lead/prevention/health-effects.htm#:~:text=Exposure%20to%20lead%20can%20seriously,Learning%20and%20behavior%20problems> (last accessed Feb. 12, 2024); *Biden-Harris Administration Proposes to Strengthen Lead Paint Standards to Protect Against Childhood Lead Exposure*, EPA, July 12, 2023, available at <https://www.epa.gov/newsreleases/biden-harris-administration-proposes->

28. “No safe level of exposure has been identified.”¹³ No amount of lead is known to be safe because “there is no known safe blood lead concentration.”¹⁴ Even exposure to very low levels of lead can “cause lower academic achievement, attention deficits and behavior problems,”¹⁵ and, when exposure is consistent, has been “found to reduce the cognitive capacity of children.”¹⁶ “[P]rolonged intake of even [] low level[s] of lead is hazardous to human beings.”¹⁷ Lead has been conclusively found to have no positive physiological role in the body, “while its harmful effects are manifold.”¹⁸ The effects of lead have also been well studied at the cellular level, and “heavy metals, including lead, create reactive radicals which damage cell structures, including DNA and cell membrane.”¹⁹

29. The Centers for Disease Control and Prevention warned “[w]hen lead is used in manufacturing, there is a risk of lead exposure for consumers of those products, especially for products intended for use in food consumption, like drinkware.”²⁰

strengthen-lead-paint-standards-protect-against (last accessed Feb, 12, 2024); AAP, Lead Exposure in Children, available at <https://www.aap.org/en/patient-care/lead-exposure/lead-exposure-in-children> (last accessed Feb. 12, 2024); WHO, Lead Poisoning, *supra* n.14; *see also* USA Today, *FDA: Recalled Applesauce Pouches Had Elevated Lead Levels and Another Possible Contaminant* (Jan. 5, 2024), at <https://www.usatoday.com/story/money/food/2024/01/05/applesauce-pouch-recall-contamination-spreads/72121869007> (last accessed Feb, 12, 2024).

¹³ Healthy Babies Bright Futures’ Report: *What’s in My Baby’s Food?*, available at https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf (last accessed February 6, 2023).

¹⁴ WHO Fact Sheet, Lead Poisoning (hereinafter “WHO, Lead Poisoning”), available at <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health> (last accessed Jan. 25, 2024).

¹⁵ Healthy Babies Investigation Report, *supra* n.30 at 18.

¹⁶ Needleman HL, et al., *The long-term effects of exposure to low doses of lead in childhood--An 11-year follow-up report*, N Engl. J Med. 1990; 322:83–88.

¹⁷ Wani AL, et al., *Lead toxicity: a review*, Interdiscip. Toxicol. Vol. 8, No. 2, pp. 55-64 (June 2015) (hereinafter “*Lead toxicity: a review*”).

¹⁸ *Id.*

¹⁹ Kosnett MJ. Lead. In: Olson K.R, ed. Poisoning and Drug Overdose. 5th ed. McGraw Hill Professional (2006).

²⁰ Daryl Austin, *Do Stanley cups contain lead or pose a risk of lead poisoning? Experts weigh in*, USA Today (Jan. 24, 2024).

30. According to Jenna Forsyth, Ph.D., a research scientist specializing in epidemiology and environmental science at Stanford University School of Medicine, “[m]ost people think of lead poisoning as a thing of the past, but lead is still all around us, often at dangerous enough levels to cause significant harm[.]”²¹

31. Lead has a half-life of roughly 30 days in the blood, “after which it diffuses into soft tissues such as the kidneys, brain, and liver and then distributed to bones, teeth and hair as lead phosphate.”²²

32. Prolonged exposure to lead accumulates in the body, leading to lead poisoning or toxicity.²³

33. Lead from foods builds up in the body over time. Lead build-up can and has been scientifically demonstrated to lead to the development of chronic poisoning, cancer, developmental and reproductive disorders, as well as serious injuries to the nervous system and other organs and body systems.

34. Lead accumulation is a major health concern. The consumption of lead contaminated food and water are *direct* sources of accumulation.

35. Lead exposure in children is particularly dangerous. Even very low exposure levels to lead can “cause lower academic achievement, attention deficits and behavior problems” and in fact, “[n]o safe level of exposure has been identified.”²⁴

36. Once lead exposure ceases, the amount of lead in the blood decreases gradually. However, lead is also stored in the bones and it “can take decades for lead stored in the bones to decrease.”²⁵

²¹ *Id.*

²² M Samuel Collin, et al, *Bioaccumulation of lead (Pb) and its effects on human: A review*, Journal of Hazardous Materials Advances (Aug. 2022)

²³ *Id.*

²⁴ Healthy Babies Bright Futures’ Report: *What’s in My Baby’s Food?*, available at https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf (last accessed February 6, 2023).

²⁵ *Health Effects of Lead Exposure*, <https://www.cdc.gov/nceh/lead/prevention/health-effects.htm> (last accessed Feb. 6, 2024).

1 37. Lead exposure in adults can cause neuropathy, a nerve condition that can lead to
2 pain, numbness, weakness or tingling in one or more parts of the body. Other effects include
3 reduced sperm count and hypertension and, depending on the blood lead level, decreased renal
4 function, increased blood pressure, and hypertension.²⁶

5 38. Jane Houlihan, a research director for Healthy Babies, Bright Futures, an alliance
6 whose mission is to reduce babies' exposures to neurotoxic chemicals, opined "lead is so toxic you
7 just can't take chances with it[.] If a company has to rely on their product remaining perfectly
8 intact in order for it to be safe, that company has a basic material safety problem that they are
9 passing on to their customers."²⁷

10 39. Lead is an "all-systems toxin" meaning "[t]here isn't a system in your body — from
11 your nervous system to your immune system to your reproductive system — that isn't harmed by
12 it."²⁸

13 40. According to the World Health Organization, "[t]here is no level of exposure to
14 lead that is known to be without harmful effects."²⁹

15 41. PMI alleges that its use of lead to seal insulation is the "industry standard"³⁰ but
16 provides no evidence to support that allegation. In fact, several other water bottle companies —
17 including Hydro Flask, Owala, and Klean Kanteen, do not use lead in their manufacturing.³¹

18 42. Plaintiff and the Class had a right to make an informed decision of whether to
19 purchase a Stanley cup, but this right was taken away by Defendant's failure to warn purchasers

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21 ²⁶ *What Are Possible Health Effects from Lead Exposure?* (May 24, 2023),
https://www.atsdr.cdc.gov/csem/leadtoxicity/physiological_effects.html.

22 ²⁷ Madeline Holcombe and Sandee LaMotte, *Stanley and other drink cups contain lead. Should you be worried?*, CNN (Jan. 26, 2024).

23 ²⁸ Daryl Austin, *Do Stanley cups contain lead or pose a risk of lead poisoning? Experts weigh in*, USA Today (Jan. 24, 2024).

24 ²⁹ *Lead Poisoning* (Aug. 11, 2023), <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health> (last accessed Feb. 6, 2024).

25 ³⁰ *Do Stanley products contain lead?* Stanley 1913,
<https://support.stanley1913.com/en/support/solutions/articles/69000850923-do-stanley-products-contain-lead-> (last visited Feb. 6, 2024).

26 ³¹ Daryl Austin, *Do Stanley cups contain lead or pose a risk of lead poisoning? Experts weigh in*, USA Today (Jan. 24, 2024).

1 of the potential presence of lead.

2 43. Based on Defendant's decision to wholly omit the presence of lead, and to instead
3 advertise, package, and market its Stanley cups as made with BPA-free 90% recycled 18/8
4 stainless steel, they had a duty to ensure that these statements were true and not misleading. As
5 such, Defendant knew or should have known the Stanley cups contained lead that could be exposed
6 to consumers.

7 44. Defendant intentionally omitted the presence of lead in the Stanley cups to induce
8 and mislead reasonable consumers to purchase their Stanley cups.

9 45. As a result of the material omissions, a reasonable consumer would have no reason
10 to suspect the presence of lead in the Stanley cups without conducting his or her own scientific
11 tests or reviewing third party scientific testing of these products.

12 46. PMI has advertised its product for "adventures" such as "scaling a mountain" or
13 "climbing a tree." Yet, PMI knew that these activities could increase the risk of the Stanley cups
14 being damaged thereby exposing the seal and exposing consumers to the lead used in the seal.

15 47. PMI markets its products as safe and durable. PMI's advertisements often show the
16 Stanley cups being used by individuals while exploring or exercising. In fact, the official Stanley
17 Brand Instagram Account displays a variety of photos depicting consumers using Stanley cups
18 while participating in strenuous activities:

19 (a) An individual holding a Stanley cup while skateboarding³²:

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21
22
23
24
25
26 ³² Stanley Brand (@stanley_brand), Instagram,
<https://www.instagram.com/p/ChFdVIQJCBv/> (last visited Feb. 14, 2024).



A)

(b) An individual drinking from a Stanley cup while mountain climbing³³:

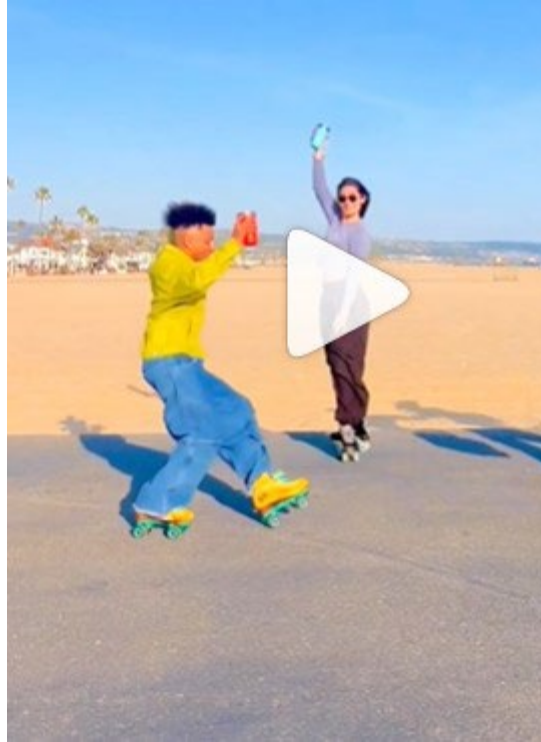


B)

(c) A screenshot of a video of two individuals holding Stanley cups while rollerblading³⁴:

³³ Stanley Brand (@stanley_brand), Instagram, <https://www.instagram.com/p/Caz8ygHBM4F/> (last visited Feb. 14, 2024).

³⁴ Stanley Brand (@stanley_brand), Instagram, <https://www.instagram.com/p/CvX0fH4Jojh/> (last visited Feb. 14, 2024).



C)

48. Other Stanley cups are marketed specifically for children. The PMI website describes some Stanley cups as “easy to carry from the playground to the classroom.” The official Stanley Brand Instagram Account displays photos of children using Stanley cups³⁵:

³⁵ Stanley Brand (@stanley_brand), Instagram, <https://www.instagram.com/p/CiNmzSKsnQM/> (last visited Feb. 14, 2024); Stanley Brand (@stanley_brand), Instagram, <https://www.instagram.com/p/CrjEmcHu8vr/> (last visited Feb. 14, 2024)



D)



E)

49. PMI markets and advertises its Stanley cups as safe and durable. Its advertisements show consumers using the Stanley cups while exercising, hiking, skateboarding, biking, among other high impact activities. Yet PMI knew, or should have known, that these products were manufactured with lead, which can be exposed if the product is altered during one of these

1 activities. PMI failed to notify consumers of this fact.

2 50. Furthermore, other water bottle manufacturers have produced products that are free
3 of lead.

4 51. Hydro Flask, for example, created an alternative process over a decade ago for
5 sealing bottles without the use of lead.³⁶

6 52. Similarly, Owala bottles “are lead free. Always Have Been. Always Will Be.”
7 Owala has used a lead-free process “from the very beginning[.]”³⁷

8 53. Klean Kanteen also manufactures and sells products that are free of lead. They use
9 a different type of plug to create its vacuum insulated product.³⁸

10 54. Thus, there are many ways for manufacturers, like PMI, to significantly reduce or
11 eliminate lead from their products.

12 55. PMI intended that the warranties, advertising, labeling, statements, and
13 representations would be considered by purchasers of the Stanley cups, including Plaintiff and the
14 proposed Class.

15 56. PMI directly marketed to Plaintiff and the proposed Class through statements on
16 their website, labeling, advertising, and packaging.

17 57. Plaintiff and the proposed Class are the intended beneficiaries of the expressed and
18 implied warranties.

19 **CLASS ACTION ALLEGATIONS**

20 58. Plaintiff brings this action individually and on behalf of the following Class
21 pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

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23
24 ³⁶ *Does Hydro Flask use lead for sealing its bottles and tumblers?*, Jan. 29, 2024,
https://faq.hydroflask.com/en_us/does-hydro-flask-use-lead-for-sealing-bottles-and-tumblers-HkQrgJLq6 (last accessed Feb. 8, 2024).

25 ³⁷ *Do Owala bottles/tumblers contain lead?*, <https://owalalife.com/pages/faq>, (last
accessed Feb. 8, 2024).

26 ³⁸ *Do Klean Kanteens have BPA, lead, phthalates or heavy metals?*,
<https://www.kleankanteen.com/pages/faq>, (last accessed Feb. 8, 2024).

1 All persons in the United States who, from February 14, 2019 to the present,
 2 purchased a Stanley cup for personal use, and not for resale (the “Class”);

3 59. Excluded from the Class are the Defendants, any parent companies, subsidiaries,
 4 and/or affiliates, officers, directors, legal representatives, employees, co-conspirators, all
 5 governmental entities, and any judge, justice, or judicial officer presiding over this matter.

6 60. This action is brought and may be properly maintained as a class action. There is
 7 a well-defined community of interests in this litigation and the members of the Class are easily
 8 ascertainable. Purchasers of the Stanley cups can identify their purchases through receipts, store
 9 rewards programs, and their own testimony.

10 61. The members in the proposed Class are so numerous that individual joinder of all
 11 members is impracticable, and the disposition of the claims of the members of all Class members
 12 in a single action will provide substantial benefits to the parties and Court.

13 62. Questions of law and fact common to Plaintiff and the Class include, but are not
 14 limited to, the following:

- 15 a. whether PMI owed a duty of care to Plaintiff and the Class;
- 16 b. whether PMI knew or should have known that the Stanley cups contained,
 17 or may contain, lead;
- 18 c. whether PMI wrongfully represented and continues to represent that the
 19 Stanley cups are safe, durable, and suitable for household and outdoor use;
- 20 d. whether PMI wrongfully represented and continues to represent that the
 21 manufacturing of the Stanley cups are subjected to rigorous standards, including following strict
 22 guidelines including but not limited to BPA/BPS, PFOS, and phthalate regulatory requirements;
- 23 e. whether PMI wrongfully failed to disclose that the Stanley cups contained,
 24 or may contain, lead;
- 25 f. whether PMI’s representations in advertising, warranties, packaging, and/or
 26 labeling are false, deceptive, and misleading;

- 1 g. whether those representations are likely to deceive a reasonable consumer;
- 2 h. whether a reasonable consumer would consider the presence of lead as a
- 3 material fact in purchasing a Stanley cup;
- 4 i. whether PMI had knowledge that those representations were false,
- 5 deceptive, and misleading;
- 6 j. whether PMI continues to disseminate those representations despite
- 7 knowledge that the representations are false, deceptive, and misleading;
- 8 k. whether PMI's representations and descriptions on the labeling of the
- 9 Stanley cups are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- 10 l. whether PMI violated the laws of the State of California;
- 11 m. whether PMI violated the laws of the State of Washington;
- 12 n. whether PMI breached its express warranties;
- 13 o. whether PMI breached its implied warranties;
- 14 p. whether PMI engaged in unfair trade practices;
- 15 q. whether PMI engaged in false advertising;
- 16 r. whether PMI made negligent misrepresentations and/or omissions;
- 17 s. whether PMI failed to warn adequately of the dangers of use of Stanley cups
- 18 that have been damaged, among other things;
- 19 t. whether Plaintiff and the members of the Class are entitled to actual,
- 20 statutory, and punitive damages; and
- 21 u. whether Plaintiff and members of the Class are entitled to declaratory and
- 22 injunctive relief.

23 63. PMI engaged in a common course of conduct giving rise to the legal rights sought
24 to be enforced by Plaintiff individually and on behalf of the other members of the Class. Identical
25 statutory violations and business practices and harms are involved. Individual questions, if any,
26 are not prevalent in comparison to the numerous common questions that dominate this action.

1 64. Plaintiff's claims are typical of those of the members of the Class in that they are
2 based on the same underlying facts, events, and circumstances relating to PMI's conduct.

3 65. Plaintiff will fairly and adequately represent and protect the interests of the Class,
4 have no interests incompatible with the interests of the Class, and have retained counsel competent
5 and experienced in class action, consumer protection, and false advertising litigation.

6 66. Class treatment is superior to other options for resolution of the controversy
7 because the relief sought for each member of the Class is small such that, absent representative
8 litigation, it would be infeasible for members of the Class to redress the wrongs done to them.

9 67. Questions of law and fact common to the Class predominate over any questions
10 affecting only individual members of the Class.

11 68. As a result of the foregoing, class treatment is appropriate.

12 **CLAIMS FOR RELIEF**

13 **COUNT I**

14 **Breach of Express Warranty**

15 69. Plaintiff incorporates by reference and realleges each and every allegation
16 contained above, as though fully set forth herein.

17 70. PMI marketed and sold the Stanley cups into the stream of commerce with the intent
18 that the Stanley cups would be purchased by Plaintiff and the Class.

19 71. PMI expressly warranted, advertised, and represented to Plaintiff and the Class that
20 their Stanley cups are safe and durable.

21 72. PMI made these express warranties regarding the Stanley cups' quality and fitness for
22 use in writing through its website, advertisements, and marketing materials. These express warranties
23 became part of the basis of the bargain that Plaintiff and the Class entered into upon purchasing the
24 Stanley cups.

25 73. PMI's advertisements, warranties, and representations were made in connection
26 with the sale of the Stanley cups to Plaintiff and the Class. Plaintiff and the Class relied on PMI's

1 advertisements, warranties, and representations regarding the Stanley Cups in deciding whether to
2 purchase PMI's products.

3 74. Defendant's Stanley cups do not conform to PMI's advertisements, warranties and
4 representations in that they:

- 5 a. Are not safe for consumption; and
- 6 b. Contain, or may contain, lead.

7 75. PMI was on notice of this breach as they were aware of the included lead in the
8 Stanley cups.

9 76. Privity exists because PMI expressly warranted to Plaintiff and the Class through
10 the warranting, advertising, marketing, and labeling that the Stanley cups safe and suitable for use
11 and by failing to make any mention of lead.

12 77. As a direct and proximate result of PMI's conduct, Plaintiff and the Class have suffered
13 actual damages in that they purchased Stanley cups that were worth less than the price they paid and
14 they would not have purchased at all had they known of the presence of lead.

15 78. Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys'
16 fees, costs, and any other just and proper relief available thereunder for PMI's failure to deliver goods
17 conforming to their express warranties and resulting breach.

18 **COUNT II**

19 **Breach of Implied Warranty of Merchantability**

20 79. Plaintiff incorporates by reference and realleges each and every allegation
21 contained above, as though fully set forth herein.

22 80. PMI is a merchant engaging in the sale of goods to Plaintiff and the Class.

23 81. There was a sale of goods from PMI to Plaintiff and the Class.

24 82. At all times mentioned herein, PMI manufactured or supplied the Stanley cups, and
25 prior to the time the Stanley cups were purchased by Plaintiff and the Class, PMI impliedly warranted
26 to them that the Stanley cups were of merchantable quality, fit for their ordinary use, and conformed

1 to the promises and affirmations of fact made on the website. Plaintiff and the Class relied on PMI's
2 promises and affirmations of fact when they purchased the Stanley cups.

3 83. The Stanley cups were not fit for their ordinary use, consumption by users, and did
4 not conform to PMI's affirmations of fact and promises as they contained lead which does not
5 conform to the packaging.

6 84. The Stanley cups did not conform to PMI's affirmations of fact that they were safe
7 and BPA free because they contained lead.

8 85. PMI breached its implied warranties by selling Stanley cups that failed to conform
9 to the promises or affirmations of fact made on the container or label as each product contained
10 lead that do not conform to the packaging.

11 86. PMI was on notice of this breach, as it was aware of the lead in the Stanley cups.

12 87. Privity exists because PMI impliedly warranted to Plaintiff and the Class through
13 the warranting, advertising, marketing, and labeling that the Stanley cups were high-quality and
14 suitable for use by consumers, and by failing to make any mention of lead.

15 88. As a direct and proximate result of PMI's conduct, Plaintiff and the Class have
16 suffered actual damages in that they have purchased Stanley cups that are worth less than the price
17 they paid and that they would not have purchased at all had they known of the presence of lead.

18 89. Plaintiff and the Class seek actual damages, injunctive and declaratory relief,
19 attorneys' fees, costs, and any other just and proper relief available thereunder for PMI's failure to
20 deliver goods conforming to their implied warranties and resulting breach.

21 **COUNT III**
22 **Fraud by Omission**

23 90. Plaintiff incorporates by reference and realleges each and every allegation
24 contained above, as though fully set forth herein.

25 91. PMI concealed from and failed to disclose to Plaintiff and the Class that their
26 Stanley cups contained lead that do not conform to the products' labels, packaging, advertising,

1 and statements.

2 92. PMI was under a duty to disclose to Plaintiff and the Class the true quality,
3 characteristics, and suitability of the Stanley cups because: (1) PMI was in a superior position to
4 know the true state of facts about its products; (2) PMI was in a superior position to know the
5 actual characteristics and suitability of the Stanley cups for use by consumers; and (3) PMI knew
6 that Plaintiff and the Class could not reasonably have been expected to learn or discover that the
7 Stanley cups were misrepresented in the packaging, labels, advertising, and website prior to
8 purchasing the Stanley cups.

9 93. The facts concealed or not disclosed by PMI to Plaintiff and the Class are material
10 in that a reasonable consumer would have considered them important when deciding whether to
11 purchase the Stanley cups.

12 94. Plaintiff and the Class justifiably relied on PMI's omissions to their detriment. The
13 detriment is evident from the true quality and characteristics of the Stanley cups, which is inferior
14 when compared to how the Stanley cups are advertised and represented by PMI.

15 95. As a direct and proximate result of PMI's conduct, Plaintiff and the Class have
16 suffered actual damages in that they purchased Stanley cups that were worth less than the price
17 they paid and that they would not have purchased at all had they known of the presence of lead
18 that do not conform to the products' labels, packaging, advertising, and statements.

19 96. Plaintiff and the Class seek actual damages, injunctive and declaratory relief,
20 attorneys' fees, costs, and any other just and proper relief available under the laws.

21 **COUNT IV**

22 **Negligent Misrepresentation**

23 97. Plaintiff incorporates by reference and realleges each and every allegation
24 contained above, as though fully set forth herein.

25 98. PMI had a duty to Plaintiff and the Class to exercise reasonable and ordinary care
26 in the formulation, testing, manufacture, marketing, distribution, and sale of the Stanley cups.

105. PMI either knew or should have known that the payments rendered by Plaintiff and the Class were given and received with the expectation that the Stanley cups would have the qualities, characteristics, and suitability for consumption represented and warranted by PMI. As such, it would be inequitable for PMI to retain the benefit of the payments under these circumstances.

106. PMI's acceptance and retention of these benefits under the circumstances alleged herein make it inequitable for PMI to retain the benefits without payment of the value to Plaintiff and the Class.

107. Plaintiff and the Class are entitled to recover from PMI all amounts wrongfully collected and improperly retained by PMI, plus interest thereon.

108. Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

COUNT VI

Violation of California's False Advertising Law, California Business & Professions Code §§17500, *Et Seq.*

109. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

110. California's False Advertising Law prohibits any statement in connection with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.

111. As set forth herein, PMI's claims that the Stanley cups are BPA-free, meet all US regulatory requirements, and are safe for use by consumers are literally false and likely to deceive the public.

112. PMI's claims that the Stanley cups are BPA-free, meet all US regulatory requirements, and are safe for use by consumers are untrue or misleading, as is failing to make any disclose the presence of lead in the Stanley cups.

113. PMI knew, or reasonably should have known, that all these claims were untrue or misleading.

114. PMI's conduct is ongoing and continuing, such that prospective injunctive relief is necessary, especially given Plaintiff's desire to purchase these products in the future if they can be assured that, so long as the Stanley cups are, as advertised, safe for use and do not contain lead.

115. Plaintiff and members of the Class are entitled to injunctive and equitable relief, and restitution in the amount they spent on the Stanley cups.

COUNT VII

Violation of the Unfair Competition Law, California Business & Professions Code §§17200, Et Seq.

116. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

117. The Unfair Competition Law prohibits any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code §17200.

Fraudulent

118. PMI's statements that the Stanley cups are BPA-free, meet all US regulatory requirements, and are safe for use by consumers are literally false and likely to deceive the public, as is PMI's failing to make any mention of the presence of lead in the Stanley cups.

Unlawful

119. As alleged herein, PMI has advertised the Stanley cups with false or misleading claims, such that Defendant's actions as alleged herein violate at least the following laws:

(a) The False Advertising Law, California Business & Professions Code sections 17500, *et seq.*

Unfair

120. PMI's conduct with respect to the labeling, packaging, advertising, marketing, and sale of the Stanley cups is unfair because Defendant's conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

121. Defendant's conduct with respect to the labeling, packaging, advertising, marketing, and sale of the Stanley cups is also unfair because it violates public policy as declared by specific constitutional, statutory, or regulatory provisions, including, but not limited to, the False Advertising Law.

122. PMI's conduct with respect to the labeling, packaging, advertising, marketing, and sale of the Stanley cups is also unfair because the consumer injury is substantial, not outweighed by benefits to consumers or competition, and not one consumers, themselves, can reasonably avoid.

123. In accordance with California Business & Professions Code section 17203, Plaintiff and the Class seek an order enjoining PMI from continuing to conduct business through fraudulent or unlawful acts and practices and to commence a corrective advertising campaign. Defendant's conduct is ongoing and continuing, such that prospective injunctive relief is necessary.

124. On behalf of themselves and the Class, Plaintiff also seeks an order for the restitution of all monies from the sale the Stanley cups, which were unjustly acquired through acts of fraudulent, unfair, or unlawful competition.

COUNT IX

Violation of the California's Consumers Legal Remedies Act, California Civil Code §§1750, et seq.

125. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

126. Plaintiff and each Class member is a "consumer," as that term is defined in California Civil Code section 1761(d).

127. The Stanley cups are "goods," as that term is defined in California Civil Code section 1761(a).

128. PMI is a "person" as that term is defined in California Civil Code section 1761(c).

129. Plaintiff and each proposed Class member's purchase of Defendant's products constituted a "transaction," as that term is defined in California Civil Code section 1761(e).

1 130. PMI's conduct alleged herein violated the following provisions of California's
2 Consumer Legal Remedies Act (the "CLRA"):

3 (a) California Civil Code section 1770(a)(5), by negligently, recklessly, and/or
4 failing to disclose the presence of lead.

5 (b) California Civil Code section 1770(a)(5), by negligently, recklessly, and/or
6 intentionally representing that the Stanley cups are safe for use, and by failing to make any mention
7 of lead in the Contaminated Stanley cups;

8 (c) California Civil Code section 1770(a)(7), by negligently, recklessly, and/or
9 intentionally representing that the Stanley cups were of a particular standard, quality, or grade,
10 when they were of another;

11 (d) California Civil Code section 1770(a)(9), by negligently, recklessly, and/or
12 intentionally advertising the Stanley cups with intent not to sell them as advertised; and

13 (e) California Civil Code section 1770(a)(16), by representing that the Stanley
14 cups have been supplied in accordance with previous representations when they have not.

15 131. PMI's failure to notify Plaintiff of the presence of lead was material as reasonable
16 consumers such as Plaintiff would deem that the Stanley cups were manufactured without proper
17 quality control procedures and contained lead important in determining whether to purchase the
18 Stanley cups.

19 132. As a direct and proximate result of these violations, Plaintiff and the Class have
20 been harmed, and that harm will continue unless PMI is enjoined from using the misleading
21 marketing described herein in any manner in connection with the advertising and sale of the
22 Stanley cups.

23 133. Plaintiff seeks an award of attorneys' fees pursuant to, *inter alia*, California Civil
24 Code section 1780(e) and California Code of Civil Procedure section 1021.5.
25
26

COUNT X

**Violation of the Washington Consumer Protection Act
REV. CODE WASH. ANN. §§ 19.86.010, ET SEQ**

134. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

135. Defendant, Plaintiff, and the members of the Washington Subclass all are persons within the meaning of the Washington Consumer Protection Act.

136. At all relevant times, Defendant engaged in trade and commerce within the meaning of the Washington Consumer Protection Act.

137. The Washington Act makes unlawful “unfair or deceptive acts or practices in the conduct of any trade or commerce.” Wash. Rev. Code Ann. § 19.86.020.

138. As alleged in this Complaint, Defendant’s actions constitute unfair and deceptive acts and practices in the conduct of any trade or commerce in violation of the Washington Act. Defendant violated the Act by, among other things:

a. Representing that the Stanley cups have characteristics or benefits that they do not have;

b. Representing that the Stanley cups are of a particular standard, quality and grade when they are not; and

c. Failing to disclose material information concerning the Stanley cups known to Defendant at the time of advertisement or sale, with the intention of inducing Plaintiff and members of the Washington Subclass to purchase the Stanley cups.

139. Defendant intended that its unfair and deceptive acts and practices would take advantage of Plaintiff and the members of the Washington Subclass by persuading them to purchase Stanley cups that would not perform as intended and don’t provide the advertised benefits.

140. The foregoing deceptive trade practices proximately caused Plaintiff and the members of the Washington Subclass to suffer an ascertainable loss in the form of, among other

1 things, overpayment of the Stanley cups that did not deliver the promised benefits.

2 141. Moreover, Defendant's unfair and deceptive acts and practices are injurious to the
3 public interest because the acts and practices have the capacity to injure other persons, had the
4 capacity to injure other persons during the Class Period, and did injure other persons during the
5 Class Period.

6 142. Plaintiff seeks to recover for the members of the Washington Subclass the
7 overcharges they incurred as a result of Defendant's deceptive practices, as well as treble damages
8 and any other legal or equitable relief that the Court deems just and appropriate.

9 **COUNT XI**
10 **Manufacturing Defect**
11 **Washington Product Liability Act**

12 143. Plaintiff incorporates by reference and realleges each and every allegation
13 contained above, as though fully set forth herein.

14 144. At all times mentioned herein, Defendant designed, manufactured, tested, marketed,
15 sold, and distributed the Stanley cups used by Plaintiff.

16 145. At all relevant times, the Stanley cups used by Plaintiff were expected to and did reach
17 Plaintiff without a substantial change in their anticipated or expected condition as manufactured,
18 handled, distributed, and sold by Defendant.

19 146. At all relevant times, the Stanley cups used by Plaintiff were shipped and stored in
20 compliance with Defendant's express written instructions.

21 147. At all relevant times, the Stanley cups used by Plaintiff were used in a manner that was
22 foreseeable and intended by Defendant.

23 148. The Stanley cups used by Plaintiff were not reasonably safe for their intended use and
24 were defective with respect to their manufacture, as described herein, in that the design and
25 manufacture posed an unreasonable risk of harm to Plaintiff.

26 149. Defendant's Stanley cups are inherently dangerous and defective, unfit, and unsafe for
their intended and reasonably foreseeable uses, and accordingly do not meet or perform to the

1 expectations of ordinary consumers.

2 150. The Stanley cups create risks to the health and safety of consumers that far outweigh
3 the cost to Defendant to utilize a lead free seal.

4 151. Defendant's manufacturing defect includes, but is not limited to failure to utilize a
5 lead free plug to create its vacuum-insulated vessels.

6 152. Accordingly, the Stanley cups deviated in a material way from the performance
7 standards of the Defendant and/or deviated in some material way from otherwise identical units of
8 the same product line.

9 153. The manufacturing defects in Defendant's Stanley cups were substantial factors in
10 causing Plaintiff's injuries.

11 154. As a direct and proximate result of Defendant's conduct described herein, Plaintiff
12 has been injured because she purchased a defective product she otherwise would not have
13 purchased, did not receive the benefit of the bargain, and/or suffered out-of-pocket loss.

14 155. Accordingly, Plaintiff would not have: (a) been subjected to the risk of exposure to
15 lead; and (b) sustained a significantly increased risk of developing various types of serious ailments.

16 156. As a direct and proximate result of Defendant's actions and omissions, Plaintiff have a
17 significantly increased risk of developing serious ailments, and have suffered economic losses.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays
20 for judgment against PMI as to each and every count, including:

21 A. An order declaring this action to be a proper class action, appointing Plaintiff and
22 their counsel to represent the Class, and requiring PMI to bear the costs of class notice;

23 B. An order enjoining PMI from selling the Stanley cups until the levels lead are
24 removed or full disclosure of the presence of such appears on all labels, packaging, and advertising;

25 C. An order enjoining PMI from selling the Stanley cups in any manner suggesting or
26 implying that they are safe for use;

1 D. An order requiring PMI to engage in a corrective advertising campaign and engage
2 in further necessary affirmative injunctive relief, such as recalling existing products;

3 E. An order awarding declaratory relief, and any further retrospective or prospective
4 injunctive relief permitted by law or equity, including enjoining PMI from continuing the unlawful
5 practices alleged herein, and injunctive relief to remedy PMI's past conduct;

6 F. An order requiring PMI to pay restitution to restore all funds acquired by means of
7 any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or
8 practice, untrue or misleading advertising, or a violation of law, plus pre- and post-judgment
9 interest thereon;

10 G. An order requiring PMI to disgorge or return all monies, revenues, and profits
11 obtained by means of any wrongful or unlawful act or practice;

12 H. An order requiring PMI to pay all actual and statutory damages permitted under the
13 counts alleged herein;

14 I. An order requiring PMI to pay punitive damages on any count so allowable;

15 J. An order awarding attorney's fees and costs, including the costs of pre-suit
16 investigation, to Plaintiff and the Class; and

17 K. An order providing for all other such equitable relief as may be just and proper.

18 **JURY DEMAND**

19 Plaintiff hereby demands a trial by jury on all issues so triable.

20
21 Dated: February 14, 2024

Respectfully submitted,

22 /s/Brendan W. Donckers

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